

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION**

SAMUEL W. BARRETT, #122612

PLAINTIFF

VERSUS

CIVIL ACTION NO. 5:09-cv-14-DCB-MTP

ARTHUR LAWLER, et al.

DEFENDANTS

ORDER

This matter is before the Court on the Plaintiff's motion for reconsideration [17] of this Court's Final Judgment [16] entered May 14, 2009. Plaintiff's complaint [1] asserted that he was transferred to the Mississippi State Penitentiary for medical evaluation and did not receive his personal property or an inventory slip. This Court determined that no constitutional violation had occurred and therefore, Plaintiff's case was dismissed with prejudice for failure to state a claim for which relief can be granted.

In his motion for reconsideration [17], Plaintiff states that he filed his complaint in the wrong jurisdiction and that he realizes it should have been filed in state court. Plaintiff requests that the judgment be altered to reflect that the case was dismissed without prejudice so that he may file his complaint in state court. Upon review of the motion and the Court record, the Court makes the following conclusions.

Although a "motion for reconsideration" is not explicitly recognized by the FEDERAL RULES OF CIVIL PROCEDURE, a litigant's request for such relief is evaluated as a motion "to alter or amend judgment" under Rule 59(e) or as motion for "relief from judgment" under Rule 60(b). See Rogers v. KBR Technical Servs., Inc., 2008 WL 2337184, *5 (5th Cir. June 9, 2008)(citing Lavespere v. Niagara Mach. & Tool Works, 910 F.2d 167, 173 (5th Cir.1990), abrogated on

other grounds). When a "motion is filed within ten days of the judgment or order of which the party complains, it is considered a Rule 59(e) motion; otherwise, it is treated as a Rule 60(b) motion." Shepherd v. Int'l Paper Co., 372 F.3d 326, 327 n.1 (5th Cir. 2004). Having reviewed the motion [17] as well as the record, this Court finds that this motion will be construed as one filed pursuant to Rule 60(b) since it was filed more than 10 days after entry of the judgment.

A party seeking relief under Rule 60(b) must show: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud, . . . misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied . . .; or (6) any other reason justifying relief from the operation of the judgment. FED. R. CIV. P. 60(b). The Court finds that the Plaintiff has failed to provide justification for altering the previous ruling of the Court. Further, this Court states that its ruling has no bearing on his ability to bring an action for the recovery of his lost property in state court. Likewise, this Court is making no determination regarding the validity of Plaintiff's claim or its success in state court. It is, therefore,

ORDERED AND ADJUDGED that Plaintiff's motion to reconsider [17] is **denied**.

SO ORDERED, this the 22nd day of September, 2009.

s/David Bramlette

UNITED STATES DISTRICT JUDGE